IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 11477 of 2004

For Approval and Signature:

HONOURABLE MR.JUSTICE A.L.DAVE

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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JAYANTILAL K SONI - Petitioner(s)

Versus

SECRETARY, INDUSTRIES AND MINES DEPARTMENT & 1 - Respondent(s)

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Appearance :

MS HINA DESAI for Petitioner(s) : 1,
MR.L.B.DABHI, ASST. GOVERNMENT PLEADER for Respondent(s) : 1 - 2.

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CORAM : HONOURABLE MR.JUSTICE A.L.DAVE

Date : 15/09/2005

ORAL JUDGMENT

The petitioner worked with respondent No.1 from 8/7/1963 to 1/1/1974. During this time, he had applied for the post of Junior Assistant in the Gujarat State Financial Corporation, pursuant to advertisement published in

Gujarat Samachar vernacular daily. The said application was sent through proper channel. It is the case of the petitioner that he was 'relieved' from his office on 1/1/1974 A.O.H., and he joined Gujarat State Financial Corporation (G.S.F.C.) from 2/1/1974, and therefore, his service was without a break. He retired from G.S.F.C. in the year 1994. After receiving all retiral benefits from G.S.F.C. Now, he claims benefit of pension, etc... on the ground that because he had applied through proper channel for being absorbed to G.S.F.C., which is a Public Sector Undertaking of the State Government, his services should be considered as continuous, and benefits of pension be given to him. He has approached this Court seeking following reliefs.

A. Be pleased to admit and allow this petition.

B. Be pleased to issue a write of certiorari or writ of mandamus or any other writ, order or direction, directing the respondent no.1 to sanction the pension of the petitioner for the services rendered by him for the period from 08.07.1963 to 01.01.1974 (approx.10 years & 8 months).

C. Be pleased to direct the respondent No.1 to pay interest at the rate of 18% p.a. to the petitioner herein for delayed payment of pension and other pensionary benefits.

D. Be pleased to pass any other and further reliefs, which may deem fit in the interest of justice.

The petitioner is relying on Government Resolution dated 1st April, 1999 (Annexure – A) and particularly, paragraph No.8 thereof to support his case. It is also contended that even Finance Department by communication dated 12th June, 2001 (Annexure – B) has expressed a view that the petitioner is entitled to pensionary benefits. It is also the case of the petitioner that several other employees similarly situated to the petitioner have been granted benefit of pension.

2. On the other hand the stand of the respondents is that the petitioner has not approached the Court with clean hands and has suppressed material facts. In the affidavit in reply, it is contended that the petitioner has resigned from his post in the Office of respondent No.1 and, then joined G.S.F.C., as such, there is no question of grant any pensionary benefits. It is also contended that the Finance Department, by communication dated 12th June, 2001, has not expressed any opinion about entitlement of the petitioner to pensionary benefits, and therefore, the petition may be dismissed.

3. Learned Advocate Ms.Desai for the petitioner has submitted that the petitioner secured appointment by applying through proper channel and therefore, his case would be governed by paragraph No.8 of the Resolution (Annexure – A) dated 1st April, 1989. The petitioner therefore, would be entitled to get the benefits of the said resolution, including pension, except carry forward of leave. She submitted that several other employees as per list (Annexure – C) have been granted benefit of pension, who were similarly situated to the petitioner, and petition may therefore, be allowed.

4. Learned A.G.P.,Mr.Dabhi has opposed this application. He has taken this Court through the affidavit in reply and supporting documents. He has drawn attention of this Court to paragraph No.3 of the said resolution of 1989. He has drawn attention of this Court to Office Order dated 2nd January, 1974, whereby resignation of the petitioner was accepted with effect from 1/1/1974 (A.N.). He submitted that therefore, there is no continuity in service of the petitioner. He having resigned from service, would not be entitled to the benefit of pension in light of Rule No.250 of Bombay Civil Services Rules (B.C.S.R.). He submitted that the

petitioner has not approached the Court with correct details and suppression of material fact itself may be treated as a good ground to dismiss the petition. He submitted that the petition may be dismissed.

5. The case of the petitioner is considered in light of rival side submissions.

6. The petitioner in his petition has indicated that he applied to G.S.F.C. through proper channel and as he was selected he was “relieved” from 1/1/1974 and he joined the G.S.F.C. from 2/1/1974. This statement in the petition is but only a half truth. Because, it is clear from Annexure – 1 to the affidavit in reply, that the petitioner had resigned from his service with respondent No.1 which was accepted with effect from 1/1/1974 afternoon. The petitioner has not in his petition, stated that he had resigned from his service to join G.S.F.C. On the contrary, from the entire petition, an impression is sought to be created that he applied through proper channel and therefore, his service was without a break. The petitioner has therefore, not revealed true and whole facts before the Court while praying for an order in exercise of

extraordinary powers under Article 226 of the Constitution of India.

7. The second aspect that emerges is that petitioner has tried to canvass that even Finance Department of the Government of Gujarat has, by communication dated 12th June, 2001 (Annexure-B), opined that the petitioner is entitled to receive pension, as he had applied through proper channel. However, while reading Annexure -B, it is found that the version canvassed by the petitioner is not correct. The communication only states that it has received an application from the petitioner and according to the petitioner he is entitled to pension as he had applied through proper channel. The Office has not expressed any opinion as canvassed on behalf of the petitioner. Thus, the petitioner has attempted to mis-read Annexure – B and thereby mislead the Court in accepting his case.

8. On scrutiny of resolution dated 1st April, 1989 (Annexure – A), it is clear that it is in respect of employees who are deputed to Public Sector Undertaking and then, absorbed in such undertakings in public interest, unlike the case of the petitioner who joined

the P.S.U. (G.S.F.C.), after resigning from the Government service. Therefore, the benefit under paragraph No.8 of the said G.R. will not be available to the petitioner. On the contrary, paragraph No.3 of the said G.R. indicates that even after such absorption in public sector undertaking or autonomous body, if such, government employee resigns after receiving pensionary benefits, the resignation will be treated as a resignation from the Government service and as a consequence thereof the pensionary benefits received under the said G.R. will be forfeited. Therefore, the said G.R. cannot be considered as favourable to the case of the petitioner.

9. Last contention is in respect of similarly situated employees. No details except the list is available and therefore, it is difficult to accept that the case of the petitioner is similar to the cases of those employees. The manner in which the petitioner has advanced his case, this Court is of the view that no reliance can be placed on bare words of the petition.

10. It would also be appropriate to record that the petitioner has preferred this petition in the year

2004, but has not referred to or annexed to the petition, the communication dated 17th April, 2002 and 25th April, 2004 which are annexed as Annexure -R3 and Annexure – R4 respectively to the affidavit in reply by respondents, which clearly reveal the reason for non-grant of benefit of pension to the petitioner on account of his resignation from service while joining G.S.F.C.

11.For the foregoing reasons, in the opinion of this Court, as the petitioner has resigned from the service for joining G.S.F.C., his case that his service is continued without a break, cannot be accepted, nor can it be accepted that he is entitled to benefits of pension, as he has resigned from service. The petitioner has already received retiral benefits from G.S.F.C. in the year 1994. Petition therefore, must fail and stands dismissed. Rule discharged. No costs.

(A.L.DAVE, J.)

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